

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALLA OHLIGER, MAHENDRA MAHESHWARI
and JOE F. SPANGLER

Appeal No. 1998-1822
Application No. 08/627,213

ON BRIEF

Before, KIMLIN, PAK and KRATZ, Administrative Patent Judges.
KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 1-14, which are all of the claims pending in this application.

BACKGROUND

Appellants' invention relates to a method for making a perforated panel useful in sound suppression applications. The method includes the step of drilling a plurality of apertures in a partially cured sheet of polymer material or a panel formed thereof. The perforated partially cured sheet or

panel is conformed or juxtaposed to a tool surface and subsequently cured via heating. An understanding of the invention can be derived from a reading of exemplary claims 1 and 11, which are reproduced below.

1. Method for fabricating polymer panels with apertures, comprising the steps of:
 providing a flat polymer panel, partially cured to a state in which the panel can be handled as a rigid sheet at room temperature;
 drilling a plurality of apertures into said partially cured panel to produce a partially cured perforated sheet;
 juxtaposing a surface of said partially cured perforated sheet with an elastomeric tool surface having a shape conforming to a desired final shaped of said panel;
 while said perforated sheet is juxtaposed with said elastomeric tool surface, heating said perforated sheet sufficiently to completely cure said perforated sheet; and
 removing said cured perforated sheet from said tool surface.

11. A method for producing a perforated acoustic article, comprising the steps of:
 providing an uncured sheet of polymer material;
 partially curing said uncuring sheet to a form in which the resulting partially cured sheet can be handled as a rigid sheet at room temperature;
 drilling a plurality of apertures in said partially cured sheet to form a partially cured perforated sheet;
 preheating said partially cured perforated sheet to make it flexible;

following said preheating step, conforming said partially cured partially cured perforated article with an elastomeric surface of a tool, which may be said tool surface, with a mold release material lying between said surface of said article and said elastomeric surface;

providing a vacuum about said conformed partially cured perforated article, and heating said conformed partially cured perforated article to generate a cured perforated article.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Harrier 1972	3,704,194	Nov. 28,
Pratt et al. (Pratt) 1974	3,787,546	Jan. 22,
Savigny 1993	5,242,652	Sep. 07,

Claims 11-14 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 2 and 5-14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Pratt in view of Harrier. Claims 3 and 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Pratt in view of Harrier and Savigny.

We refer to the brief and to the answer for the opposing viewpoints expressed by the appellants and by the examiner concerning the above-noted rejections.

OPINION

For the reasons which follow, we will not sustain any of the examiner's rejections.

Rejection Under 35 U.S.C. § 112, second paragraph

The examiner has expressed a number of concerns regarding the claim language. See answer, page 9 for the statement of the examiner's rejection. However, the examiner simply does not carry the burden of explaining why the language of either claims 11 or 14, as it would have been interpreted by one of ordinary skill in the art in light of appellants' specification, drawings and the prior art, fails to set out and circumscribe a particular area with a reasonable degree of precision and particularity.

As explained by appellants (brief, pages 13-15), the claim language in question is reasonably definite. We are in agreement with appellants' position since the examiner has not shown that the claims, in question, do not define appellants'

process with a reasonable degree of precision and clarity, especially when read in light of appellants' specification.

The examiner's questioning of several of the terms of claims 11 and 14 (answer, page 9 and pages 16-18) appears to be premised on the examiner's preference for somewhat different wording in the claims as well as the examiner's concern with claim breadth rather than with the establishment of any actual ambiguity or indefiniteness of the language employed by appellants. In short, the examiner has apparently not given due regard to the principle that claims are not to be interpreted in a vacuum, but in light of information disclosed in appellants' specification and knowledge available in the prior art as understood by a person of ordinary skill in the art. See *In re Moore*, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971). Consequently, we will not sustain the rejection under 35 U.S.C. § 112, second paragraph.

Rejections Under 35 U.S.C. § 103

The examiner has not carried the burden of explaining how the teachings of Pratt and Harrier, in combination, furnish sufficient evidence to have reasonably suggested the method of either of the independent claims 1 and 11, on appeal. As

argued by appellants in their brief (pages 9 and 10), neither Pratt nor Harrier, alone or in combination, suggests the drilling of a partially cured panel or sheet in combination with the other claimed method steps in forming a perforated article, as herein claimed. The examiner recognizes that Pratt does not disclose such a drilling step (answer, page 5, first sentence). Harrier (column 1, lines 28-36) discloses a prior art method of drilling a sheet after curing. As recognized by the examiner (answer, page 12) however, Harrier does not disclose drilling a partially cured sheet or panel as herein claimed. Rather, Harrier (column 1, line 59 through column 2, line 54) teaches that pointed studs are used to form perforations in a partially cured sheet, not a drilling step. Hence, even if the teachings of Pratt and Harrier were combined, the examiner has not established, by the reference evidence relied upon, how the herein claimed process including drilling of a partially cured sheet would have been suggested to one of ordinary skill in the art. Nor, with regard to claims 3 and 4, has the examiner convincingly explained how Savigny would have cured the above-noted deficiency in the teachings of Pratt and Harrier.

The examiner's generalized assertion that it would have been obvious to replace one technique for forming apertures with another (answer, page 12) is simply not enough to sustain an obviousness determination as to the specific claimed subject matter herein based on the evidence relied upon by the examiner. On this record, the examiner has not proffered satisfactory supporting evidence or a convincing rationale that specifically addresses how the applied references would have taught or suggested the herein claimed method including the limitations discussed above.

For the foregoing reasons, we find that the examiner has not established a *prima facie* case of obviousness. Accordingly, we reverse both § 103 rejections before us.

CONCLUSION

The decision of the examiner to reject claims 11-14 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention, to reject claims 1, 2 and 5-14 under 35 U.S.C. § 103 as being

unpatentable over Pratt in view of Harrier, and to reject
claims 3 and 4 under 35 U.S.C.

§ 103 as being unpatentable over Pratt in view of Harrier and
Savigny is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHUNG K. PAK)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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PETER F. KRATZ)	
Administrative Patent Judge)	

PFK/sld

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APPEAL NO. - JUDGE KRATZ
APPLICATION NO.

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DECISION: **ED**

Prepared By:

DRAFT TYPED: 25 Oct 02

FINAL TYPED: